INTEROFFICE MEMORANDUM

FORM 2022

DATE ▶ June 18, 1980

TO ▶ Sid Sheinberg

FROM ▶ Joseph V. Di Muro

SUBJECT ▶ "KING KONG" - MERCHANDISING RIGHTS

COPIES ▶ Steve Adler, Steve Kroft, Shel Mittleman, Mel Sattler, Jay Stein, Legal Files, Legal Info.

This will reply to your inquiry regarding the "KING KONG" merchandising rights.

The following brief chronology may be helpful:

1. August 29, 1975 RKO - Dino De Laurentiis Corporation ("DDLC") Agreement: RKO granted to DDLC the exclusive right to produce and exploit one "KING KONG" photoplay. DDLC's exclusive rights under such Agreement continued for three years from the date of first general release of DDLC's picture in the United States but in no event beyond five years from the "effective date" of such Agreement. (The parties later stipulated that such "effective date" would be deemed to be August 29, 1976).

2. August 29, 1975 RKO - DDLC Supplemental Agreement: RKO licensed to DDLC the merchandising rights as generally known in the motion picture industry for a term equal to DDLC's exclusivity period under the Agreement referred to in paragraph 1 above. Upon the expiration of such exclusivity period, DDLC's merchandising rights would expire.

3. April 14, 1976 DDLC - Paramount - RKO Agreement: DDLC granted to Paramount the merchandising rights in the name and character "KING KONG" in the United States and Canada and the right to enter into agreements in Paramount's name in the exercise of such merchandising rights. Neither DDLC nor Paramount could grant merchandising rights extending beyond December 1, 1979 or beyond the termination date of DDLC's exclusivity period under the Agreement referred to in paragraph 1 above.

4. December 15, 1976 Cooper - Universal Agreement: Cooper's grant to Universal included all of his right, title and interest in the "KING KONG" motion picture rights and merchandising rights, but Cooper reserved:

a) World-wide publishing rights except for public domain material.

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b) The right to all monies received or to be received by RKO relating to "KING KONG" under agreements entered into prior to December 15, 1976 by or under the authority of RKO, except monies received or to be received by RKO in connection with the distribution, exploitation and merchandising of DDLC's "KING KONG".

5. Final judgment (entered 3/21/79) on Cooper's Cross-Complaint in the U.S. District Court Declaratory Relief Action brought by Universal against RKO, DDLC and Cooper: As between RKO and Cooper, all rights in the name, character and story "KING KONG", including merchandising rights (but excluding RKO's 1933 "KING KONG" and "SON OF KONG") are solely owned by Cooper.

Based on the foregoing documents, it is our opinion that:

a) The "KING KONG" merchandising rights granted by RKO to DDLC and by DDLC to Paramount expired in December 1979, that is, three years after the first general release of DDLC's "KING KONG". The five year period (referred to in paragraph 1 above) does not establish the length of DDLC's exclusivity period but merely fixes an outside date, beyond which the exclusivity period (and the right to merchandise) could not run.

b) Under the Cooper-Universal Agreement, Universal acquired all "KING KONG" merchandising rights (which the U.S. District Court found to be vested in Cooper) except that Cooper retains the proceeds from all merchandising licenses entered into prior to December 15, 1976 other than DDLC and/or Paramount merchandising of DDLC's "KING KONG".

JVD:ab

J. V. D.

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